

March 11, 2008

The Honorable Barbara Boxer
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Madam Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated January 16, 2008, regarding the NRC licensing process for the proposed Yucca Mountain repository. In particular, I would like to address your concerns regarding the possibility that the Department of Energy (DOE) may submit a license application for review that is only 35 percent complete. I assure you that the NRC will only begin its review if there is sufficient information to evaluate the proposed repository's safety. The NRC's independent regulatory review of DOE's license application for the Yucca Mountain repository, if submitted, will be thorough, comprehensive, and transparent.

Should DOE submit a license application, the first step the NRC staff will take will be to determine if all the necessary information, as specified in the applicable governing regulations, is included in the application. Percent completion of the total design is not a valid indicator of the sufficiency of the safety information contained in an application. In large facilities licensed by the NRC, the structures, systems, components, and activities that bear on protecting public health, safety, and the environment and providing for security are the portions of the facility design of importance to the NRC staff's review. For a geologic repository, the NRC, based on its current understanding of DOE's design, would expect to focus its review on items such as spent fuel canister handling equipment; high efficiency particulate air systems; features, events, or processes that could affect the repository's ability to isolate waste; and many other items. It is unnecessary for the NRC to review those parts of the facility design not related to safety and security, although they may comprise a significant portion of the overall facility design. Examples of the types of features that the NRC staff would not expect to require a safety review include administrative buildings, warehouses, heavy equipment maintenance facilities, potable water and sanitation systems, and rail car and truck buffer areas. The NRC's regulations, particularly those at 10 CFR Part 63, and the associated implementing guidance, specify what information must be included in the license application. Only after it has been determined that sufficient information is included in the license application would the NRC staff begin its safety review. During this review, the NRC may request DOE to provide additional information, if warranted. The staff's review will determine if the license application demonstrates that the proposed repository will be in compliance with all applicable regulations and, therefore, will adequately protect public health and safety and the environment. The staff will document its conclusions in a publicly-available Safety Evaluation Report.

Transparency and public involvement are important aspects of NRC's license review process. Documents related to the license application and the NRC staff's review will be made available to the public, unless they pertain to protected sensitive information. Similarly, most meetings between the NRC staff and DOE during the staff's license application review will also be open to the public. In addition, the State of Nevada, local governments, and members of the public will be afforded the opportunity to participate meaningfully in the license application review process through formal public evidentiary hearings on the license application before an independent panel of administrative judges, known as an Atomic Safety and Licensing Board.

Your concern about the impact of allowing DOE to add to the application in coming years on the openness of the NRC's review is a matter that the NRC has considered in developing the repository licensing process. Any additions to the license application would be made available to the public, and members of the public would have the opportunity to address changes in the application through the NRC's hearing process. In addition, if a construction authorization is issued, and after construction is substantially complete, the NRC will conduct a second review to determine whether a license can be issued to DOE to receive waste at Yucca Mountain. If the NRC decides to authorize construction of the proposed Yucca Mountain repository, that decision will be based on both the results of the NRC staff's detailed safety review and the public hearings.

Please contact me if you have any further questions.

Sincerely,

/RA/

Dale E. Klein